

Resolution No.: 17-505
Introduced: July 24, 2012
Adopted: July 24, 2012

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Government Operations and Fiscal Policy Committee

SUBJECT: Approval of Executive Regulation 13-12, Amendments to Montgomery County Personnel Regulations, Employee Drug and Alcohol Use and Drug and Alcohol Testing

Background

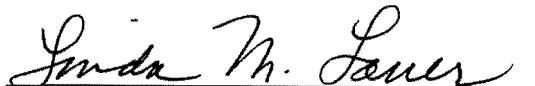
1. On June 7, 2012, the County Council received Executive Regulation 13-12 to amend Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration (FTA) requirements.
2. This regulation adds a new circumstance No. 8 under "Observed collections" and a new section is also added as "D" under "Collecting a new specimen from an applicant or employee after a dilute test."
3. Executive Regulation 13-12 is processed under Method 2 and takes effect upon adoption of the Council resolution approving it or on a later date specified in the regulation.

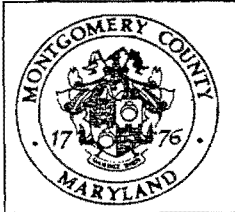
Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 13-12 to amend Section 32 of the Montgomery County Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration (FTA) requirements is approved.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing	Number	13-12
Originating Department	Office of Human Resources	Effective Date	July 24, 2012

MCPR Amendments on Employee Drug and Alcohol Use and Drug and Alcohol Testing

Executive Regulation No. 13-12

Issued by: County Executive

Supersedes: Executive Regulation 9-10

Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

Montgomery County Register Volume 29, Issue 5

Comment deadline: May 31, 2011

Effective date: July 24, 2012

Summary: This regulation amends Section 32 of the Personnel Regulations to incorporate changes for safety-sensitive transit employees requested by the Maryland Transit Administration in order for the County to be in compliance with Federal Transit Administration requirements.

Address for comments Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5154, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface

* * *

Heading or defined term.

Existing language unchanged by executive regulation.



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SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by Safety-Sensitive Transit Employees under Federal Transit Administration Regulations

* * *

- (c) ***Safety-Sensitive Transit positions.*** The following are Safety-Sensitive Transit positions if the employee must have a CDL or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:

* * *

- (e) **Drug and alcohol prohibitions.**

* * *

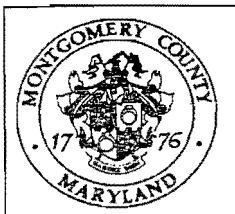
- (4) ***Refusal to submit to drug or alcohol testing.***

* * *

- (H) * * *

Observed collections are required in the following circumstances:

- (1) All return-to-duty tests;
- (2) All follow-up tests;
- (3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen was outside of the accepted temperature range of 90°-100°F;
- (4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have



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been tampered with;

- (5) Anytime a collector observes that the employee brought materials to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;
- (6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
- (7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed; and
- (8) Anytime the employee admits to the collector or MRO that the employee adulterated or substituted the specimen.

* * *

(g) ***Types of drug and alcohol testing.***

* * *

(5) ***Return-to-duty testing.***

(A) ***After prohibited drug use or refusal to take a drug test.***

If the County does not dismiss or terminate an employee who refuses to submit to a drug test or has a verified positive drug test result, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:



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- (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment.
 - (ii) a Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations; the employee takes a return-to-duty alcohol test with a verified negative result; and
 - (iii) the employee takes a return-to-duty drug test under direct observation with a verified negative result; and
 - (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- (B) ***After prohibited alcohol use or refusal to take an alcohol test.*** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:
- (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment;
 - (ii) the Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has



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actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(iii) the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test under direct observation with a verified negative result.

(6) **Follow-up testing.** The County must ensure that an employee who returns to duty after a required evaluation by a Substance Abuse Professional under Section 32-5(j)(2) is subject to unannounced follow-up drug testing, alcohol testing, or both, as follows:

(A) the employee must take at least 6 unannounced follow-up tests during the first 12 months after the employee returns to duty and is subject to follow-up testing for a period of one to 5 years;

(B) the Substance Abuse Professional must determine, based on the Substance Abuse Professional's assessment of the employee's unique situation and recovery progress, the frequency and duration of follow-up testing beyond the minimums that will deter or detect a relapse;

(C) the County must conduct the collection process for return-to-duty drug testing under direct observation; and



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- (D) follow-up testing, performed under direct observation, is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

* * *

- (h) **Retesting of employees; collecting a new specimen after a dilute test result.**

* * *

- (3) ***Collecting a new specimen from an applicant or employee after a dilute test result.***

* * *

- (B) If the MRO reports a dilute negative test result that requires collection of another specimen for testing, the County must immediately notify the applicant or employee of the need to collect another specimen and that it must be provided within no more than 48 hours from the time of notification. If the employee is on duty, the employee must be accompanied to the collection site immediately for collection of the second specimen. If the applicant or employee fails to report for specimen collection within 48 hours and has not provided a valid reason for the delay, the County must treat it as a refusal to test.

- (C) The MRO will direct whether the new specimen is to be collected under direct observation or not.

- (D) After a dilute negative test result, if a new specimen is collected for testing this second test will be the test of record. If this second



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test also produces a dilute negative result, no additional tests will be conducted.

* * *

Approved:

Isiah Leggett
Isiah Leggett, County Executive

6/6/2012
Date

Approved as to form and legality:

David Stevenson

Office of the County Attorney

4/13/12

Date